No. 23

In the Supreme Court of the United States

October Term, 1936

THE UNITED STATES OF AMERICA, APPELLANT,

v.

TOM HARPER.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1935

No. 22

THE UNITED STATES OF AMERICA, APPELLANT

v.

FRED HASTINGS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The District Court rendered no opinion.

JURISDICTION

The judgment of the District Court was entered February 4, 1935 (R. 4). The appeal to this Court was prayed and allowed on March 4, 1935 (R. 5, 7). The jurisdiction of this Court to review by direct appeal the judgment involved is conferred by the Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C., Title 18, Sec. 682).

QUESTION PRESENTED

Whether the District Court erred in sustaining the demurrer of the appellee filed to an indictment charging him with removing and stealing certain cotton from a licensed warehouse contrary to the provisions of the "United States Warehouse Act" as amended.

STATUTE INVOLVED

Act of August 11, 1916, as amended March 2, 1931, c. 366, Sec. 10, 46 Stat. 1463, 1465 (U. S. C. Sup. VII, Title 7, Sec. 270):

> Every person who shall forge, alter, counterfeit, simulate, or falsely represent, or shall without proper authority use, any license issued by the Secretary of Agriculture, or his designated representative, under this chapter, or who shall violate or fail to comply with any provision of section 250 of this chapter, or who shall issue or utter a false or fraudulent receipt or certificate, or change in any manner an original receipt or certificate subsequently to issuance by a licensee, or any person who, without lawful authority, shall convert to his own use, or use for purposes of securing a loan, or remove from a licensed warehouse contrary to this chapter or the regulations promulgated thereunder, any agricultural products stored or to be stored in such warehouse, and for which licensed receipts have been or are to be issued, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $10,000, or double

the value of the products involved if such double value exceeds $10,000, or imprisoned not more than ten years, or both, in the discretion of the court, and the owner of the agricultural products so converted, used, or removed may, in the discretion of the Secretary of Agriculture, be reimbursed for the value thereof out of any fine collected hereunder, by check drawn on the Treasury at the direction of the Secretary of Agriculture, for the value of such products to the extent that such owner has not otherwise been reimbursed. That any person who shall draw with intent to deceive, a false sample of, or who shall willfully mutilate or falsely represent a sample drawn under this chapter, or who shall classify, grade, or weigh fraudulently, any agricultural products stored or to be stored under the provisions of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof fined not more than $500, or imprisoned for not more than six months, or both, in the discretion of the court.

STATEMENT

On January 31, 1935, the appellee, with one J. B. Barner, was indicted in the United States District Court for the Northern District of Mississippi, Delta Division, on three counts. (R. 1.) The counts are identical, save for the designation of the particular bale of cotton charged to have been removed. The first count is as follows:

The grand jurors of the United States, impaneled, sworn, and charged at the term

aforesaid, of the court aforesaid, on their oath present, that Fred Hastings and J. B. Barner, about or on the 9th day of November, in the year 1934 in the Delta division of said district, and within the jurisdiction of said court, at the city of Clarksdale in Coahoma County, Mississippi, did knowingly, wilfully, and unlawfully and without any authority of law, remove and steal from and out of the warehouse of the Federal Compress and Warehouse Company, Clarksdale, Mississippi, being the warehouse of said Federal Compress and Warehouse Company known and designated as Plant No. 2, said warehouse being then and there a duly licensed warehouse under and pursuant to the provisions of the United States Warehouse Act, certain agricultural products then and *the* there stored and on storage in said warehouse, to wit: a certain bale of cotton identified on the records of said warehouse as bale of cotton number 407784, for which said bale of cotton a licensed warehouse receipt had theretofore been issued by said Federal Compress and Warehouse Company, the removal and stealing of said cotton from said licensed warehouse being then and there contrary to and in violation of the said United States Warehouse Act and the regulations promulgated thereunder, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

On February 4, 1935, the appellant filed a demurrer to this indictment (R. 3). The reasons

assigned are that Section 270 is unconstitutional, that the indictment fails to charge that the cotton was the personal property of another, that it was of any value, that it was converted to the use of the defendants, or either one of them; that the indictment fails to allege the ownership of the property or any intent to defraud the owner thereof; and that it is so vague and indefinite as not to inform the appellee of the charges against him (R. 3).

On February 4, 1933, the District Judge sustained the demurrer (R. 4). On February 21, 1935, he signed a certificate giving as the grounds for his action substantially the reasons set forth in the demurrer (R. 4).

From that judgment this appeal is taken.

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred:

1. In holding that Section 270, Title 7 of the United States Code, under which the indictment was drawn, is unconstitutional, in that Congress is without authority to declare it an offense against the laws of the United States to remove agricultural products from a warehouse licensed under the Federal Warehouse Act.

2. In holding that the indictment was defective because of the failure to allege that the cotton charged to have been removed and stolen was the property of any person.

3. In holding that the indictment was defective because of the failure to allege the ownership of

the cotton charged to have been removed and stolen, and the intent to defraud the owner thereof.

4. In holding that the indictment was defective because of the failure to allege the value of the cotton charged to have been removed and stolen, or that it had any value.

5. In holding that the indictment was defective because it fails to charge any offense against the laws of the United States.

6. In sustaining the demurrer to the indictment.

Facts Concerning the Functions of the Warehouse and the Warehouse Receipt Relevant to the Constitutional Questions at Issue

The present record contains none of the factual background necessary to an understanding of the functions of the warehouse and the warehouse receipt in the marketing of agricultural products in interstate commerce. Appellant assumes, however, that the Court will consider all the relevant facts of which it may properly take notice.[1] Facts of this character are set forth in the statement which follows. For the purposes of the present case, particular reference is made to cotton.

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[1] See *Muller* v. *Oregon*, 208 U. S. 412, 419; *New State Ice Company* v. *Liebmann*, 285 U. S. 262, 286–287 (dissent); *Bandini Co.* v. *Superior Court*, 284 U. S. 16; *Home Building & Loan Association* v. *Blaisdell*, 290 U. S. 398, 422, 444; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, 10–15; *Nebbia* v. *New York*, 291 U. S. 502; *Burns Baking Co.* v. *Bryan*, 264 U. S. 504, 514, 519; *Schollenberger* v. *Pennsylvania*, 171 U. S. 1, 10.

1. THE NEED FOR AN ADEQUATE WAREHOUSING SYSTEM

Warehouses properly perform three important functions in the marketing of cotton. (1) They aid in financing the marketing movement by providing negotiable warehouse receipts which may be used as collateral for loans, and which, if accurate and reliable, greatly facilitate trading. (2) By eliminating the need for immediate selling, they distribute the marketing period over a greater period of time. And, (3) they furnish physical protection to the cotton until it is consumed.[2]

Prior to the World War, when the break-down of agricultural markets focused attention on the inadequacies of the system, the warehouses were unable to perform any of these functions adequately.[3]

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[2] See Services in Cotton Marketing, U. S. Department of Agriculture, Bulletin No. 1445, p. 23; *Cotton Warehousing—Benefits of an Adequate System*, Yearbook of U. S. Department of Agriculture (1918) (referred to hereafter as *Cotton Warehousing*), p. 400.

[3] "The outbreak of the European war emphasized the fact that the farm-marketing machinery of this country is seriously weak, insufficient, and inadequate—a condition which already had been more or less recognized by students of farm economics. From a very thorough study of our system of marketing there will appear: (1) A lack of adequate storage facilities; (2) a lack of proper control and regulation of such storage systems as exist; (3) an absence of uniformity in their methods of operation and the form of receipts issued; (4) a multiplicity of standards for grading and classification, or in some cases an entire absence of such standards for grading and classification; (5) a lack of disinterested graders, classifiers, and weighers; (6) a lack of proper relationship between the storage and banking systems

If properly stored, cotton is among the least perishable of agricultural products, yet facilities for marketing it over a space of time and in an orderly and efficient manner were poor. Production loans, usually arranged, for obvious reasons, to mature during the harvesting season, forced the farmer to sell immediately, usually on an already glutted market, and at a reduced price.[4] Any other course of conduct was extremely difficult. Warehouses were inadequate, and their lax methods and uncertain financial responsibility made their receipts of little value as collateral.[5] Poor construction and lack of necessary fire protection caused high insurance rates which in turn made storage more expensive.[6] Banks were unwilling to loan on cotton as collateral,

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of the country." H. Rep. No. 60, 64th Cong., 1st sess., p. 1, the report on H. R. 9419, which became the present Act. See also *Cotton Warehousing*, *supra*, p. 427.

[4] A study of 25 seasons from 1892–93 to 1916–17 showed that in 16 seasons the low average price occurred during September, October, November, or December, the four months of heaviest marketing. In 5 other seasons the low point was reached in the month just before or just after. *Cotton Warehousing*, *supra*, pp. 400–403. Since that time the price has been much more free from seasonal fluctuations. Only 7 times during the 18 years from 1915–1916 to 1932–1933 was the lowest price reached during those 4 months. See Yearbook, U. S. Department of Agriculture (1931), Table 148, and Yearbook, U. S. Department of Agriculture (1934), Table 121.

[5] See H. Rep. No. 60, 64th Cong., 1st sess., p. 1; *Cotton Warehousing*, *supra*, p. 399.

[6] See *Cotton warehousing*, *supra*, p. 399.

even local banks exacting a very high rate of interest.[7]

Yet if the farmer or local dealer, repelled by the high cost and slight value of storage, kept his cotton stacked on the ground, or in poorly constructed sheds, as many of them did, the so-called "country damage" was inevitable. Weather, fire, mud, dust, and rot took an annual toll estimated at from $30,000,000 to $75,000,000.[8]

Even before the passage of the Federal Act, the States had sought to remedy the situation by imposing schemes of state supervision, and at the present time practically all of the southern States have enacted not only the Uniform Warehouse Receipts Act, but also regulatory legislation of various types.[9] State regulation, however, was not wholly adequate.[10] Lack of uniformity in warehouse receipts detracted from their free use as collateral, and warehouse receipts issued in one State would differ radically from those issued in

[7] See Loëb, *Warehousing as Affecting the Production, Financing, and Marketing of Cotton*, Nat. Conf. of Marketing and Farm Credits (1915), p. 2; Yearbook, U. S. Department of Agriculture (1933), p. 84.

[8] *Cotton Warehousing*, *supra*, p. 404.

[9] State warehouse laws are analyzed in Hanna, *The Protection of a Holder of a Warehouse Receipt* (1931) 15 Minnesota Law Review, 292.

[10] Even at the present time state regulation is not satisfactory. See *Hanna*, *supra*, pp. 305, 316. The use made of the Federal Act (*infra*, p. 21) attests the value which is attributed to an adequate and uniform system of warehouse licensing.

another.[11] In addition, the value of the warehouse receipt depends not only on the care taken to supervise the warehouse, but also on the skill and impartiality of the weighers, graders, and classifiers. Because state laws gave no assurance that only competent men would be employed in these positions, banks hesitated to rely on the receipts of warehouses even if they were under state supervision.[12]

2. THE UNITED STATES WAREHOUSE ACT

The Federal law, enacted in 1916, is an attempt to make the warehouse and the warehouse receipt efficient and effective elements in the marketing of agricultural products in interstate and foreign commerce. By it any warehouseman is given the privilege of applying to the Secretary of Agriculture for a license to operate any warehouse in

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[11] *Financing the Production and Distribution of Cotton*, Federal Reserve Board (1923) pp. 30, 31. State regulation made it necessary for banks to know the warehouse laws of each State and their possible weaknesses. See an analysis of state laws in Federal Reserve Bulletin, September 1915, p. 260.

[12] "The considerations which determine the value of warehouse receipts are: (1) The structure and location of the warehouse, (2) the facts set forth on the receipt, (3) the kind and amount of supervision received from disinterested parties, (4) the net free assets of the company, (5) the size and nature of the bond furnished, (6) the kind and amount of insurance carried on the cotton in the warehouse, and (7) the integrity and standing of the officials responsible for the operation of the warehouse." *Services in Cotton Marketing*, *supra*, p. 23.

which any agricultural product is or may be stored for interstate or foreign commerce (7 U. S. C., Secs. 242, 244). The applicant must be found competent to conduct such a warehouse in accordance with the Act and the regulations, and must have a satisfactory margin of assets. (Reg. 2, Secs. 2, 3.[13]) The warehouse itself must be suitable for the proper storage of the particular agricultural product for which the license is sought (Sec. 244). Once the applicant has been licensed, every precaution is taken to insure the reliability of the warehouse receipts which he issues. A bond is required, proportioned to the size of the warehouse (Sec. 247; Reg. 3). Adequate insurance must be maintained (Sec. 247; Reg. 5, Secs. 1–3). The records, books, and papers of the warehouse must be kept in a fireproof vault, or other safe place (Reg. 5, Sec. 6), and an adequate system of accounting is required (Reg. 5, Sec. 11). Frequent inspections are made, both of the warehouse (Sec. 243) and of the records and books of the warehouseman (Sec. 267), and if violations of the Act or of the regulations are discovered the license may, after a hearing, be revoked (Sec. 246). Rates must be reasonable, and before any changes are made in the schedule of charges a statement in writing must be filed with

[13] References to the regulations are to Regulations for Cotton Warehouses, U. S. Department of Agriculture, Bureau of Agricultural Economics, Service and Regulatory Announcements No. 126 (1934), as amended to July 18, 1935.

the Secretary showing the proposed change and the reasons therefor. (Reg. 5, Sec. 7.)

The receipts themselves are required to give complete information about the products which they represent. The Act provides (7 U. S. C., Sec. 260):

> Every receipt issued for agricultural products stored in a warehouse licensed under this chapter shall embody within its written or printed terms (a) the location of the warehouse in which the agricultural products are stored; (b) the date of issue of the receipt; (c) the consecutive number of the receipt; (d) a statement whether the agricultural products received will be delivered to the bearer, to a specified person, or to a specified person or his order; (e) the rate of storage charges; (f) a description of the agricultural products received, showing the quantity thereof, or, in case of agricultural products customarily put up in bales or packages, a description of such bales or packages by marks, numbers, or other means of identification and the weight of such bales or packages; (g) the grade or other class of the agricultural products received and the standard or description in accordance with which such classification has been made: *Provided,* That such grade or other class shall be stated according to the official standard of the United States applicable to such agricultural products as the same may be fixed and promulgated under authority of law: *Provided further,* That until such offi-

cial standards of the United States for any agricultural product or products have been fixed and promulgated, the grade or other class thereof may be stated in accordance with any recognized standard or in accordance with such rules and regulations not inconsistent herewith as may be prescribed by the Secretary of Agriculture; (h) a statement that the receipt is issued subject to the United States Warehouse Act and the rules and regulations prescribed thereunder; (i) if the receipt be issued for agricultural products of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; (j) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien: *Provided,* That if the precise amount of such advances made or of such liabilities incurred be at the time of the issue of the receipt unknown to the warehouseman or his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof shall be sufficient; (k) such other terms and conditions within the limitations of this chapter as may be required by the Secretary of Agriculture; and (l) the signature of the warehouseman, which may be made by his authorized agent: *Provided,* That unless otherwise required by the law of the State in which the warehouse is located, when requested by a depositor of other than fungible agricultural products, a receipt

> omitting compliance with subdivision (g) of this section may be issued: *Provided, however,* That the Secretary of Agriculture may in his discretion require that such receipt have plainly and conspicuously embodied in its written or printed terms a provision that such receipt is not negotiable.

In addition, elaborate precautions have been taken to insure that all receipts shall be genuine. A plan has been worked out which throws around the issuance of receipts restrictions similar to those used in issuing bank notes. Since 1924 all cotton receipts have been printed upon only special paper by a bonded printer, have been numbered serially, and have been issued to the warehousemen under strict supervision.[14]

To increase still further the value of the receipts, the Secretary of Agriculture is authorized by the Act to issue, upon application, and after proof of qualification, licenses to individuals to classify, grade, sample, or weigh the products to be stored in licensed warehouses (Sec. 252; Reg. 7). Such licenses are revocable if the licensees cease to act or in any way become incompetent (Sec. 253; Reg. 7, Sec. 11). Inspection and grading of the products stored in licensed warehouses need not be done by licensed inspectors and graders, however, unless the products are fungible and are to be mingled in a common mass (Secs. 256, 258).

[14] Services in Cotton Marketing, *supra*, p. 23; *Once Again the United States Warehouse Act*, U. S. Department of Agriculture (1925) pp. 6–7.

The Warehouse Act has found wide favor with warehousers of cotton,[15] and the receipts meet the approval of the banks.[16] Cooperative marketing associations favor its use.[17]

3. THE USE OF THE WAREHOUSE RECEIPT IN MARKETING COTTON

The problem of financing the marketing of cotton may be divided into two phases, that of financing the primary markets scattered throughout the

[15] For the first five years, licenses were few. By April 1, 1920, only 23 warehouses with a capacity of 40,050 bales of cotton had been licensed. (U. S. Dept. of Agriculture, Service and Regulatory Announcements No. 71, p. 3.) By the following year, the number of warehouses had increased to 238, with a capacity of 429,957 bales. (*Ibid.*) By May 1, 1922, 268 warehouses had been licensed, with 1,209,695 bales capacity. (*Ibid.*) By February 1930 there were 362 licensees with a total capacity of 4,881,459 bales. (S. Rep. No. 1775, 71st Cong., 3d sess., p. 1.) The latest figures from the Bureau of Agricultural Economics, for September 14, 1935, show that 438 cotton warehouses in 16 States with a total capacity of 5,988,380 bales are now licensed under the Act, and that licenses have been issued to 884 cotton granders, classifiers, weighers, and samplers. See p. 20, *infra*.

[16] See, *e. g.*, Service and Regulatory Announcements No. 71, *supra*, pp. 6–9; *Once Again the United States Warehouse* Act, *supra*, pp. 11–12; Hanna, *The Protection of a Holder of a Warehouse Receipt* (1931), 15 Minnesota Law Rev., p. 292, 295–296; yearbook, U. S. Department of Agriculture (1933), p. 84.

[17] See Hearing before Senate Committee on Agriculture and Forestry on H. R. 7, 71st Cong., 3d sess., pp. 11–17; *The Banker and the United States Warehouse Act*, U. S. Department of Agriculture (1925), p. 11.

South, and that of financing the central cotton markets in the larger centers.[18]

In the primary markets the receipts are used by both growers and buyers. The grower who is not in a position to finance himself, but who does not wish to dump his cotton on the market as soon as it is ginned is able to negotiate a loan from the local bank by using the warehouse receipts as collateral.[19] The local buyer, operating on a limited amount of cash, pledges the warehouse receipts for cotton which he buys with the bank and receives money to purchase more cotton, which he can, in turn, pledge for more money.[20] The amount which can be borrowed on a warehouse receipt, and hence its utility in financing the local markets, depends on the factors already mentioned.[21]

It is in the concentration markets scattered through the South, however, that credit is needed in amounts which only the large financial centers

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[18] Financing the Production and Distribution of Cotton, Federal Reserve Board (1923). This study presents a clear picture of the importance of the warehouse receipt in cotton marketing. See also Services in Cotton Marketing, *supra*, pp. 19–33.

[19] Financing the Production and Distribution of Cotton, *supra*, pp. 31–32.

[20] Sometimes a demand-acceptance arrangement is worked out with the local bank, the warehouse receipts being used as collateral against the advances. *Ibid.* When the cotton is to be moved, the bank will usually exchange the warehouse receipt for a trust receipt which it holds until the trust receipts are in turn surrendered in exchange for the bills of lading. *Id.*, p. 33.

[21] *Id.*, p. 35.

can supply.[22] A large part of this credit is extended to the cotton factors. Sometimes the factors receive the cotton itself, and sometimes they receive only the warehouse receipts and a sample. In either event, the factor immediately pledges the receipts with the banks to secure the advances he needs. When the loans become larger than the local banks can handle, banks in other cities are called upon to aid, the warehouse receipts usually being held in trust by the local bank to secure the loans from the larger cities.[23]

But the chief functions in assembling and distributing the cotton fall upon the cotton merchants or brokers. As the cotton season progresses, the broker accumulates large stocks, financing himself by pledging his warehouse receipts. Credit is in large part secured from banks in large centers, the warehouse receipts either being sent to the large banks or held for their account by the local banks.[24]

Warehouse receipts are also widely used as a convenient means of trading in cotton on the large exchanges in New York and New Orleans. After the cotton has been warehoused, the receipts are sent

[22] The yearly average maximum borrowings by spot and future cotton concerns in the financial centers for the three years ending in 1922 was $121,809,695.67. Of the cities furnishing funds, New York, New Orleans, and Boston supplied 55.67% of the total. *Id.*, p. 36.

[23] *Id.*, p. 37.

[24] *Id.*, p. 39.

to those cities and delivered in satisfaction of future contracts.[25]

The warehouse receipt is also used extensively by mills to finance purchases of cotton, both in the cotton producing States, and in the North.[26]

4. THE PRESENT CASE

The nature of the warehouse involved in the present case must be deduced from facts outside the record, but a fair picture may be had. Clarksdale, Mississippi, in which the warehouse from which the cotton alleged to have been stolen is located (R. 1), is the county seat of Coahoma County and had, in 1930, a population of 10,043. It is located on the main line of the Yazoo & Mississippi Valley Railway, about 70 miles south of Memphis, Tennessee, and is an important cotton market.[27] Coahoma County is located in the heart of the same delta region as Greenwood and Cleveland, Mississippi, and it may be assumed that the practices set out in *Federal Compress Co.* v. *McLean,* 291 U. S. 17, and *Chassaniol* v. *City of Greenwood,* 291 U. S. 584, also prevail in Clarksdale, which is of comparable size.[28]

Cotton, one may assume, comes to Clarksdale, sometimes by wagon or truck, more often by rail.

[25] See By-Laws, New York Cotton Exchange, §§ 42–44.

[26] Financing the Production and Distribution of Cotton, *supra*, pp. 41–43; Services in Cotton Marketing, *supra*, pp. 32–35.

[27] Encyclopedia Brittanica (14th ed., 1929), vol. 5, p. 767.

[28] Cleveland, in 1930, had a population of 3,240; Greenwood, 11,123.

It is warehoused there, and the warehouse receipts are used to buy and sell, and are pledged at the banks for loans, much of the credit being obtained outside the State.[29] All but a negligible part of the cotton ultimately finds its way into other States.[30] When the cotton is brought to Clarksdale by rail, through rates are allowed from the point of origin to the point of destination, even though the cotton is warehoused in Clarksdale for a time.[31]

The foregoing statement is not intended to indicate that warehouses have any less important function in the marketing of other basic agricultural commodities. Like cotton, products such as grain, tobacco, and wool are produced in a limited section of the United States and pass through the

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[29] The inability of the local banks to finance the cotton crop is becoming less pronounced, due to the increased use of the intermediate credit corporations (Services in Cotton Marketing, *supra*, pp. 31–32). Their present limitations are demonstrated by the situation in Mississippi. Figures compiled by the Bureau of Agricultural Economics from census reports show that the average annual production of cotton in that State during the years 1931–33 was about 1,435,000 bales. At $50 per bale, which is low, this would be a value of $71,500,000. The Bankers Directory (1934) showed for all banks in Mississippi a total capital, surplus, and undivided profits of only $19,429,000 on January 1, 1934. All of this money is not, of course, available for cotton, as lumber, farming, cottonseed, and ordinary commercial operations require a large percentage of it.

[30] Figures compiled by the Bureau of Agricultural Economics from census reports show that for the ten-year period 1925–1934, only 2.66% of the cotton produced in Mississippi was consumed in that State. See also *Federal Compress Co.* v. *McLean*, *supra*, p. 20.

[31] Services in Cotton Marketing, *supra*, p. 20; see *Federal Compress Co.* v. *McLean*, *supra*, p. 20.

channels of interstate commerce to the ultimate consumers. The Warehouse Act has also been widely used as an aid to the orderly and efficient marketing of these and similar crops. The extent to which the Act has been utilized, as well as the conservatism with which licenses are issued, is indicated by the following table:[82]

Applications received and licenses issued, week ending Sept. 14, 1935

Commodity	Applications		Licenses		
	Warehouseman	Classifier, weigher, &c.	Warehouseman: Number	Warehouseman: Capacity	Classifier, weigher, &c.
Cotton	1,483	2,551	438	b/o 5,989,300	884
Grain	1,932	3,865	377	bus 88,737,140	943
Wool	128	308	7	lbs 12,712,420	22
Tobacco	270	742	32	lbs 256,805,000	134
Nuts:					
Peanuts	96	131	8	tons 9,435	14
Pecans	15	20	....	tons	....
Broomcorn	9	15	3	bales 15,250	4
Beans	53	114	3	cwt 135,000	18
Potatoes	55	86	....	cwt	....
Sirup	30	39	3	gals 127,000	6
Dried fruit	12	34	5	lbs 11,394,060	14
Canned foods	336	273	42	cases 1,963,770	47
Cottonseed	38	53	....	tons	....
Cold-pack fruit	9	32	3	lbs 9,588,000	9
Seeds	12	56	4	cwt 385,700	20
Cherries in brine	5	16	4	lbs 2,475,000	13
Combinations	37	34	11	(1)	4
Total:					
Week	7	17	11	....	14
To date	4,580	8,349	960	....	2,136

[1] CAPACITY (COMBINATIONS)

Cotton	bales	211,100	Potatoes	cwt	....
Grain	bushels	902,563	Sirup	gallons	....
Wool	lbs	318,000	Dried fruit	lbs	....
Tobacco	lbs	103,400,000	Canned foods	cases	14,000
Peanuts	tons	6,340	Cottonseed	tons	....
Pecans	lbs	....	Cold-pack fruit	lbs	....
Broomcorn	bales	....	Seeds	cwt	....
Beans	cwt	304,000	Cherries in brine	lbs	....

[82] Compiled from the weekly report of the Bureau of Agricultural Economics. "Combinations" refers to warehouses in which more than one product is stored.

SUMMARY OF ARGUMENT

I

A. The United States Warehouse Act is not a compulsory measure, but rather a permissive statute which allows warehousemen to receive the benefits of Federal supervision. Although appellant submits that the Act would be valid as applied to appellee even with this feature absent, its presence, eliminating any direct clash of Federal and State power, and emphasizing cooperative effort, must be given great weight in determining whether Congress has encroached upon the powers of the States.

B. The relationship of warehouses to interstate commerce is not problematical, indirect or remote. The marketing of the South's cotton requires a volume of credit beyond the capacity of local financial institutions, and warehouses, issuing warehouse receipts of wide and ready acceptability, supply the chief medium by which credit can be obtained from the financial centers. Without adequate credit, growers would be forced to sell during the harvesting season, with consequent wide and disturbing seasonal fluctuations in price. Much cotton which was not sold would be stored improperly, much of it would be destroyed or damaged. In particular, buyers, not only those operating locally but also those who buy large stocks in the concentration centers, would be seriously handicapped by lack of funds. Wide acceptance of this voluntary Act indicates its important function.

Warehouses like the present one, located in Mississippi, have a particularly close relationship to the interstate movement of cotton, because almost all of the Mississippi cotton ultimately leaves the State. Its journey is in two stages, the former from the gin to the warehouse, the latter from the warehouse to another State or foreign country, but the flow is definite and well recognized. Warehouses may therefore be allowed to submit their operations to Federal supervision because of their intimate relation to and connection with this flow.

The facts in *Stafford* v. *Wallace,* 258 U. S. 495, are, in essential details, similar to those in the present case. In each, intrastate activity is subject to Congressional power because of its intimate relationship to an interstate flow of goods. That the warehouses in the present case affect the current before it leaves the State of origin is not an essential difference, for the relationship to the current can be equally direct at that stage. Several decisions recognize that the commerce power of Congress allows it to regulate activity within the State of origin. Nor is it material that the activity affected is also within the taxing power of the States, as many cases have heretofore recognized. *Federal Compress Co.* v. *McLean,* 291 U. S. 17, and *Chassaniol* v. *City of Greenwood,* 291 U. S. 584, are thus not contrary authority. Indeed, they give express recognition to the governmental purposes of the Warehouse Act, and contain no intimation that those purposes are beyond the power of Congress.

Schechter Poultry Corp. v. *United States,* Nos. 854 and 864, October Term, 1934, denied only the existence of Congressional power after the goods had reached the State of final destination and had become mingled with the mass of goods therein, and is consequently not inconsistent with Congressional power in the present case.

It is not necessary, however, to sustain the validity of the Warehouse Act as applied to appellee, to find that warehouses such as the present one are within or closely connected with the interstate flow of cotton, for Congress may supervise activity of any character which has a direct and substantial effect upon interstate commerce. If the effect is direct and substantial, Congress may not only remove burdens on that commerce, but may also enact legislation designed to foster and promote it, as many decisions illustrate. Particularly should it be allowed to foster it by voluntary measures, for that mode of accomplishing its purposes does not give rise to the usual countervailing considerations arising from the burdens incident to mandatory universal conformity and from the superseding of the law-making powers of the States.

The effect upon commerce must be "direct" and "substantial", but in each case that is a question of fact. The operation of warehouses is so vital to the interstate movement of cotton that it is clearly within the scope of those concepts, as their limits have been pricked out by the cases.

II

Even though all the activities of a warehouse in which goods are stored for interstate or foreign commerce may not be put voluntarily under the supervision of Congress, the warehouse receipts, as instrumentalities of interstate commerce, may be protected by the imposition of criminal penalties such as those here sought to be imposed upon the appellee. The receipts have such an essential function in the marketing of the cotton crop, and move in interstate commerce themselves to such a large extent, that they may be protected by Congress for the same reasons that it protects interstate and foreign bills of lading. *United States* v. *Ferger*, 250 U. S. 199. The protection of the warehouse receipt, by making it a crime to withdraw the commodity which it represents, is as necessary as provisions forbidding forgery or alteration and is indeed afforded by the same section of the statute.

III

If upon any of the foregoing bases, the Warehouse Act, as applied to the appellee, is a proper exercise of the commerce power of Congress, criminal sanctions are proper to make its regulations effective. Each individual act which might interfere with the functions of the warehouse and its receipts may be punished, in order to prevent the cumulative effect which would arise from its constant repetition. That the Act is voluntary does

not prevent the punishment of one who illegally interferes with a licensed warehouse, even though he may be legally a stranger to it. *Westfall* v. *United States*, 274 U. S. 256.

The remaining assignments of error are briefly argued (pp. 49–50, *infra*) and do not warrant repetition here.

ARGUMENT

I

THE EXTENSION OF VOLUNTARY SUPERVISION OVER WAREHOUSES IN WHICH GOODS ARE STORED FOR INTERSTATE OR FOREIGN COMMERCE IS, AS APPLIED TO APPELLEE, A VALID EXERCISE OF THE POWER OF CONGRESS

A. THE VOLUNTARY NATURE OF THE WAREHOUSE ACT

At the outset it should be noted that the Warehouse Act is not a compulsory measure, but rather one by which individual warehousemen may, if they so desire, be licensed by the Secretary of Agriculture and avail themselves of the advantages of Federal supervision. Although appellant submits that the Act, as applied to appellee, could be sustained as a valid exercise of the commerce power even though it was mandatory, the fact that it is not of that nature, but merely permissive, must be of great weight in determining whether Congress has encroached upon the powers reserved to the States by the Tenth Amendment. Under this Act there is no direct clash of Federal and State power; no Congressional action which ousts the States

from all control, even over warehouses in which goods are stored for interstate or foreign commerce."[33] The aim is, rather, Federal aid and cooperation in the efforts of the States to provide warehouses to facilitate the movement of cotton in an orderly manner."[34] The Act does not set up Federal instrumentalities, nor remove the licensees from the taxing power of the States. (*Federal Compress Co.* v. *McLean*, 291 U. S. 17). In addition, it is clear that the criminal sanctions imposed by the

[33] Cf. *Schechter Poultry Corp.* v. *United States*, Nos. 854 and 864, October Term, 1934: "But the statutory plan is not simply one for voluntary effort. It does not seek merely to endow voluntary trade or industrial associations or groups with privileges or immunities * * *. If valid [the codes], place all persons within their reach under the obligation of positive law, binding equally those who assent and those who do not assent." See also *Westfall* v. *United States*, 274 U. S. 256, 259; *Hiatt* v. *United States*, 4 F. (2d) 374, 377 (C. C. A. 7th).

[34] Section 9 of the Warehouse Act provides (7 U. S. C., Sup. VII, 269): "In the discretion of the Secretary of Agriculture he is authorized to cooperate with the State officials charged with the enforcement of State laws relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, or classifiers; * * *." The phrase immediately following, which was added in 1931, providing that "the power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect" does not change the permissive nature of the Act, but merely allows the Act to stand on its own bottom. This change was made because it was found that Federal warehouse receipts could not be completely acceptable so long as it was necessary for a banker to be familiar with the laws of each State, to which the

present Act (7 U. S. C., Sec. 270) do not supersede, but only supplement any criminal sanctions which may be applied by the State to prevent the same crimes. *United States* v. *Lanza*, 260 U. S. 377; *Fox* v. *Ohio*, 5 How. 410, 435; *United States* v. *Marigold*, 9 How. 560, 569.

B. THE OPERATION OF COTTON WAREHOUSES IN FACILITATING AND PROTECTING THE MOVEMENT OF COTTON OUT OF MISSISSIPPI IS INTIMATELY RELATED TO AND HAS A DIRECT AND SUBSTANTIAL EFFECT UPON INTERSTATE COMMERCE

The general outline of the methods of cotton marketing which has been previously presented (pp. 7–18, *supra*), shows clearly that the relationship of warehouses to this interstate movement of cotton is not remote or problematical. This picture may be summarized as follows:

Marketing of the cotton crop of the South requires an enormous amount of credit. This credit the local banks are utterly unable to supply (pp. 17, 19, *supra*) and it can be obtained from the large financial centers of the country only if there is a collateral basis for loans which meets the approval of

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Federal Act had theretofore been subservient. See S. Rep. No. 1775, 71st Cong., 3rd sess., p. 2.

That cooperative effort, rather than conflict, has been the result, is evident from the fact that in North and South Carolina the State warehouse superintendents, who are lessees of all cotton warehouses in order to facilitate State supervision, license them all under the Federal Act. See Hanna, *The Protection of a Holder of a Warehouse Receipt* (1931), 15 Minnesota Law Rev., pp. 292, 315–316.

the central banking institutions. Warehouses, issuing warehouse receipts of known value and wide acceptability supply the chief medium by which the local banks are enabled to supplement their own resources.

The situation prior to the passage of the present Act illustrates the obstacles to the free movement of cotton which would exist if this basis of credit were destroyed. Producers, unable to borrow on their harvested cotton to meet their maturing production loans, would be forced to sell immediately, flooding the market and accentuating the seasonal variation in price (see p. 8, *supra*), with resultant disorganization of orderly marketing. With warehouse receipts furnishing only an indifferent basis of credit, the chief incentive for warehousing would be gone, and much cotton that would otherwise move in interstate commerce would be destroyed or rendered unmarketable by "country damage" arising from storage on the ground or in inadequate sheds. Buyers, particularly, would be seriously curtailed; even buyers in large centers, who otherwise can operate on a reasonable amount of cash and a very large amount of credit secured by pledging the warehouse receipts for their previous purchases, would be hampered, and the movement of the crop would be further delayed and disturbed. The United States Warehouse Act, though purely voluntary, has been utilized by a very large proportion of the cotton warehouses in the South, and meets the approval of both the banks and the dealers, as

a service of the greatest value in marketing the cotton crop.

This disturbance would be particularly great in Mississippi, for practically all of the cotton produced in that State eventually moves in interstate commerce. From the time it leaves the local gin until it reaches the mill in some other State or in a foreign country, over 95 percent of the cotton moves, with more or less rapidity, out of Mississippi. After its movement has begun, but before it leaves that State, its journey may be interrupted by a period of storage in a warehouse, usually not for long. If the warehouses are properly supervised, they will stimulate and assist the flow; if they are not it may be burdened. The interstate movement itself is definite, inevitable. Even transportation facilities do not take into account its temporary pauses; freight rates are through rates from the point of origin to the point of destination, not combination rates from the point of origin to the warehouse in the concentration center, such as Clarksdale, and from the warehouse to the destination. See p. 20, *supra*; *Federal Compress Co.* v. *McLean*, 291 U. S. 17, 19–20. Cotton produced in the South is destined for interstate movement to the mills of the North and East as surely as the grain or livestock from the West is destined for shipment to similar manufacturing and consuming centers. *Board of Trade* v. *Olsen*, 262 U. S. 1; *Stafford* v. *Wallace*, 258 U. S. 495; *Lemke* v. *Farm-*

ers Grain Co., 258 U. S. 50; *United States* v. *Patten*, 226 U. S. 525.

The situation is essentially similar to that involved in *Stafford* v. *Wallace*, 258 U. S. 495. The Packers and Stockyards Act of 1921, which was there sustained, provided for supervision and control of facilities for the purchase, sale, and handling of livestock in the stockyards, with the direct object of securing a free and unburdened flow from the Western ranches to the Eastern consuming States. Like a warehouse, the stockyard was not a final destination, but, as the Court described it, only "a throat through which the current flows." (P. 516.) The practices which that Act condemned were, even though local in their nature, held subject to Congressional control because they were a burden on the commerce which they should instead have facilitated. See also *Board of Trade* v. *Olsen*, 262 U. S. 1; *Swift & Co.* v. *United States*, 196 U. S. 375; *Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420, 439. That the operation of warehouses, like the operation of stockyards, is a business which is subject to legislative control is not open to question. *Munn* v. *Illinois*, 94 U. S. 113; *W. W. Cargill Co.* v. *Minnesota*, 180 U. S. 452; *Merchants Exchange of St. Louis* v. *Missouri*, 248 U. S. 365; *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50.

It is true that in *Stafford* v. *Wallace*, *supra*, the activity to which the power of Congress was extended occurred after the stock had left the State of origin, while in the present case the flow of

cotton passes through warehouses such as the one here involved before it leaves Mississippi. That fact, however, cannot limit the scope of the commerce power, as in each case the actual impact of Congressional regulation is upon intrastate activity which, considered apart from the relation it bears to the flow of products among the States, would be without the ambit of Congressional supervision or control. See *Board of Trade* v. *Olsen*, 262 U. S. 1, 34. Clearly, that relationship can be equally direct when the current is affected before the goods have left the State in which they originate. It is not necessary to consider whether Congress may prevent activity which chokes the current at its source, for in the present case the movement of the cotton has definitely begun before it reaches the warehouses.

Several decisions of this Court recognize that this flow of commerce may be vitally affected by forces which act upon it within the State of origin. *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50, is peculiarly applicable. In that case a North Dak statute requiring purchasers of grain to obtain a license and pay a fee, and regulating the weighing, grading, and inspection of the grain and the prices paid for such services was held an invalid burden on interstate commerce as applied to a purchaser who bought grain and loaded it immediately into box cars with the intention of shipping it to Minneapolis. If sufficiently high local prices had been offered, his shipments might have been diverted to

points within North Dakota, but his usual course of business was to send the grain out of the State immediately. The point of time at which the State act impinged was clearly prior to the beginning of the final movement out of the State, but, once the regular flow of goods out of the State had been established, the Court found no difficulty with that fact. The same result was reached under similar circumstances in *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282, *Eureka Pipe Line Co.* v. *Hallanan*, 257 U. S. 265, and *United Fuel Gas Co.* v. *Hallanan*, 257 U. S. 277. Cf. *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295. See *Local 167* v. *United States*, 291 U. S. 293, 297.

It is clearly recognized in *Stafford* v. *Wallace*, *supra*, that cases which define the limits of non-discriminatory state taxation do not determine the extent of the Congressional power of regulation. See 258 U. S. 495, 525–26. *Minnesota* v. *Blasius*, 290 U. S. 1, affords an excellent illustration. Although Minnesota had levied a general property tax upon the cattle which had temporarily come to rest in the taxpayer's stockyards, and although this Court stated that the operation of the stockyard was "manifestly" so related to the current of commerce as to be within the scope of Congressional regulation, it said (p. 8):

> • • • because there is a flow of interstate commerce which is subject to the regulating power of Congress, it does not necessarily follow that, in the absence of a conflict with the exercise of that power, a State may

not lay a non-discriminating tax upon property which, although connected with that flow as a general course of business, has come to rest and has acquired a situs within the State.

The same distinction was recognized in *Swift & Co. v. United States,* 196 U. S. 375, 400, and *Bacon v. Illinois,* 227 U. S. 504, 516. So long as the state tax or regulation does not burden interstate commerce or conflict with Federal law, the same activity may be subject to both State and Congressional action.[35]

This at once reveals the distinction between the present case and *Federal Compress Co.* v. *McLean,* 291 U. S. 17, and *Chassaniol* v. *City of Greenwood,* 291 U. S. 584, upon which appellee will no doubt rely. In the *Federal Compress* case Mississippi had imposed a non-discriminatory tax upon the business of compressing and warehousing cotton. The Federal Compress & Warehouse Company, which had been licensed under the United States Warehouse Act, assailed the validity of the tax as applied to it, both on the ground that it was a Federal instrumentality and as such exempt, and also on the theory that the tax was a burden on interstate commerce. Neither objection was found

[35] Compare *Bacon* v. *Illinois,* 227 U. S. 504, and *Dickson* v. *Uhlman Grain Co.,* 288 U. S. 188, with *Board of Trade* v. *Olsen,* 262 U. S. 1 (grain exchanges); *Minnesota* v. *Blasius, supra,* with *Stafford* v. *Wallace, supra,* (stockyards); *Oliver Iron Mining Co.* v. *Lord,* 262 U. S. 172, with *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295 (mining).

valid. That by virtue of the Federal license the warehouse was such an instrumentality of the national government as to render it immune from state taxation was denied for the reason that the business was still a private one for profit, not a governmental enterprise. Cf. *Broad River Power Co.* v. *Query*, 288 U. S. 178, 180. That the tax was a burden on interstate commerce was also denied, for the reason that the privilege taxed, being one that was exercised before the actual movement into interstate commerce was begun, was too remote to constitute a substantial burden on it. Cf. *Crescent Cotton Oil Co.* v. *Mississippi*, 257 U. S. 129.

The opinion gives no indication that the State power to tax the warehouse is inconsistent with the existence of a Congressional power to allow the same warehouse to subject itself to Federal supervision if it wishes. Indeed, the opinion specifically points out that the exercise of the State power in no way conflicts with the present Act and adds that the purpose of the Act is to secure "a means of control over those engaged in the business of storing agricultural products who find it advantageous to apply for the license * * * in the furtherance of a *governmental purpose* to secure fair and uniform business practices." (P. 23. Italics supplied.) No intimation is given that Congress was without power to allow such licenses to be taken out under Federal supervision."

" The Warehouse Act has been referred to by this Court on numerous other occasions, and no intimation has ever been

Nor is there any indication that the burden on interstate commerce was viewed as any more than a question of fact. It is submitted that had the state law been found to have a substantial effect on the current of interstate commerce in cotton, as was true of the state regulation of dealings in grain in *Lemke* v. *Farmers Grain Co.*, 257 U. S. 50, it would have been declared invalid. In this respect the decision is essentially like those in *Munn* v. *Illinois*, 94 U. S. 113; *Budd* v. *New York*, 143 U. S. 517; *Brass* v. *Stoeser*, 153 U. S. 391;

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given that it is invalid. *Chassaniol* v. *City of Greenwood*, 291 U. S. 584, 586; *Merchants Exchange of St. Louis* v. *Missouri*, 248 U. S. 365, 368; *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50, 60. Its constitutionality has also been assumed in numerous cases before the lower federal courts, *Young & Jones* v. *Hiawatha Gin Co.*, 17 F. (2d) 193 (S. D. Miss.); *Crittenden & Co.* v. *North British & Mercantile Insurance Co.*, 23 F. (2d) 526 (S. D. Miss.), 31 F. (2d) 700 (C. C. A. 5th); *Central States Grain Co-operative, Inc.*, v. *Nashville Warehouse & Elevator Corp.*, 48 F. (2d) 138 (C. C. A. 7th), and in several decisions of the State courts. *Alabama Warehousing Co.* v. *State*, 227 Ala. 258; *Maryland Casualty Co.* v. *Washington Loan & Banking Co.*, 167 Ga. 354; *Maryland Casualty Co.* v. *Johnson Co.*, 167 Ga. 365; *National Bank of Wilkes* v. *Maryland Casualty Co.*, 167 Ga. 737; *Southern Cotton Oil Co.* v. *Merchants' & Citizens' Bank*, 176 S. E. 392 (Ga.); *Sams Co.* v. *Jewell-Loudermilk Co.*, 42 Ga. App. 676; *Armstrong* v. *Sisti*, 242 N. Y. 440; *Lacy* v. *Hartford Accident & Indemnity Co.*, 193 N. C. 179.

Several unreported cases have also enforced the criminal penalties imposed. In *United States* v. *Gresham* (W. D. Okla. 1925), a demurrer raising the question of unconstitutionality was overruled. In four other cases pleas of guilty were entered. *United States* v. *Burts* (S. D. Ga. 1925); *United States* v. *Potter* (Colo. 1927); *United States* v. *Tarpley* (N. D. Ga. 1928); *United States* v. *Coffee* (S. D. Ga. 1930).

W. W. Cargill Co. v. *Minnesota,* 180 U. S. 452; and *Merchants Exchange of St. Louis* v. *Missouri,* 248 U. S. 365. In each the burden imposed upon interstate commerce by state warehouse laws, considered as a question of fact, was found to be too remote. It by no means follows, as the cases cited above demonstrate, that the relationship of the activity which was the subject of the state tax to interstate commerce is so remote as to be without the scope of Congressional supervision, especially if it is extended only to those who desire it. In other words, the fact that a non-discriminatory tax on warehouses which deal with goods within a current of interstate commerce is not a burden on that commerce sufficient to invalidate the law as so applied, does not require the conclusion that the connection between the warehouses themselves and that commerce is not such as to warrant the extension to them of a licensing privilege by the Federal Government.

Chassaniol v. *City of Greenwood, supra,* stands on the same basis. Another Mississippi tax, imposed on persons buying or selling cotton, was there sustained as applied to buyers who purchased with the intention of exporting, but not directly for interstate sale. The Court recognized that the greater part of the cotton thus bought and sold eventually left the State but inasmuch as the transactions were, in themselves, intrastate, they were not beyond the state power to tax. In stating that *Stafford* v. *Wallace,* 258 U. S. 495, *supra* (which sustained the ex-

ercise of Federal power), was in harmony with this result, the decision cited *Minnesota* v. *Blasius*, 290 U. S. 1, in which, as pointed out above, clear recognition had been given to the concurrent scope of the taxing power of the States.

Nor is a Congressional power to control activities which, while wholly within the State of origin, are within or connected with a well-defined interstate flow, inconsistent with the fact that Congressional power ceases when the goods have reached the State of destination and become mingled with the mass of property within that state. *Schechter Poultry Corp.* v. *United States*, Nos. 854 and 864, October Term, 1935. The basis of that doctrine was there stated to be that the property:

> had come to a permanent rest within the State. It was not held, used, or sold by defendants in relation to any further transactions in interstate commerce and was not destined for transportation to other States. Hence, decisions which deal with a stream of interstate commerce—where goods come to rest within a State temporarily and are later to go forward in interstate commerce—and with the regulations of transactions involved in that practical continuity of movement, are not applicable here.

Each of the factors which are said to be absent in the *Schechter* case are present in the instant one. Appellant submits, therefore, that the action of Congress in allowing warehouses such as the one involved here to become subject to Federal super-

vision is a proper exercise of the power of Congress over activities directly related to the well-defined current of commerce in cotton flowing out of Mississippi.

It is not necessary, however, to sustain the validity of the Warehouse Act as applied to appellee to find that warehouses such as the one here involved are within or directly connected with the flow of interstate commerce. If this Court determines that warehousing precedes the beginning of that flow, appellant submits that the facts already stated show that its effect on the interstate commerce in cotton is so direct and substantial that in order to foster and protect that commerce Congress may allow warehouses such as the present one to come under Federal supervision.

The scope of the commerce power has been stated by this Court to be "the power to enact 'all appropriate legislation' for its protection and advancement * * *; to adopt measures 'to promote its growth and insure its safety' * * *; 'to foster, protect, control, and restrain.'" *Texas & N. O. R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, 570; *Second Employers' Liability Cases,* 223 U. S. 1, 47; *Mobile County* v. *Kimball,* 102 U. S. 691, 697; *The Daniel Ball,* 10 Wall. 557, 564. Past decisions have also made it clear that Congressional power extends not only to strictly interstate matters but also to any and all kinds of intrastate activity which are found to burden or affect interstate commerce in a substantial manner. *United States*

v. *Ferger*, 250 U. S. 199, 203; *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295; *Loewe* v. *Lawlor*, 208 U. S. 274; *Houston & Texas Ry.* v. *United States*, 234 U. S. 342; *Minnesota Rate Cases*, 230 U. S. 352; see *Schechter Poultry Corporation* v. *United States*, Nos. 854 and 864, October Term, 1934.

The decisions of this Court show many instances in which the power of Congress to enact legislation for the "protection and advancement" of commerce and to "promote its growth" have been sustained. Clearly, the power of Congress is not restricted to removing physical obstructions [37] or the burdensome effect of state laws [38] or of the action of individuals.[39]

The outstanding examples of the exercise of this power to foster and advance commerce are to be found in the transportation field. The *New England Divisions Case*, 261 U. S. 184, and *Dayton-Goose Creek Ry.* v. *United States*, 263 U. S. 456, are illustrative of assistance given by Congress to the weaker railroads, in order that the general level of

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[37] E. g., *In re Debs*, 158 U. S. 564.

[38] E. g., *Lemke* v. *Farmer's Grain Co.*, 258 U. S. 50; *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282; *Robbins* v. *Shelby County*, 120 U. S. 489; *International Text Book Co.* v. *Pigg*, 217 U. S. 91.

[39] E. g., *Northern Securities Co.* v. *United States*, 193 U. S. 197; *United States* v. *Patten*, 226 U. S. 525; *Binderup* v. *Pathe Exchange*, 263 U. S. 291; *Coronado Coal Co.* v. *United Mine Workers of America*, 268 U. S. 295; *United States.* v. *Joint Traffic Ass'n*, 171 U. S. 505.

service might be raised. *Atlantic Coast Line R. R. Co.* v. *Riverside Mills,* 219 U. S. 186, in which the Carmack Amendment, making the initial carrier liable for loss of goods delivered over connecting lines, was upheld, is a further illustration of the power of Congress to facilitate and promote interstate shipments. This Court has approved congressional action to promote efficiency in the transaction of interstate commerce, not only by protecting the safety of those engaged in interstate transportation and the safety of goods in the course of such transportation (*Southern Railway Co.* v. *United States,* 222 U. S. 20), but by limiting the continuous hours of service (*Northern Pacific Ry. Co.* v. *Washington,* 222 U. S. 370), and by abolishing the common-law doctrine as to fellow-servants and limiting the defences of assumption of risk and contributory negligence (*Second Employers' Liability Cases,* 223 U. S. 1). The decision in *Railroad Retirement Board* v. *Alton R. R. Co.,* 295 U. S. 330, is not opposed to the extension of Federal assistance in the present case. The question in that case upon which the Court divided was whether old-age security for railroad employees had any effect on promoting efficiency at all. No intimation was given that in any case in which an effect of more than problematical weight was found, Congress had no power to act. For present purposes the most significant case is that of *United States* v. *Ferger,* 250 U. S. 199, in which a statute punishing the

forging of interstate bills of lading was upheld, for the reason that the utility of all interstate bills of lading would be substantially impaired if false ones were not prevented. Furthermore, it is submitted that the principle recognized in these decisions applies with especial force in the present case because of the absence—due to its wholly voluntary nature—of the countervailing considerations in such decisions of the burden upon all individuals of conforming to the Congressional regulation and of the superseding of otherwise sovereign powers of the States.

There is also precedent for Congressional action to prevent price fluctuations and consequent market disturbances, such as are inevitable in the marketing of cotton if the basis of credit is weakened and more producers are forced to sell during the marketing season to meet their obligations (see p. 8, *supra*). The prevention of similar fluctuations in the price of grain on the Grain Exchanges are the object of the Grain Futures Act sustained in *Board of Trade* v. *Olsen*, 262 U. S. 1. Cf. *United States* v. *Patten*, 226 U. S. 525; *Swift & Co.* v. *United States*, 196 U. S. 375; *Stafford* v. *Wallace*, 258 U. S. 495.

It is acknowledged, of course, that Congress is limited in its action to those things which will, in fact, foster and promote interstate commerce in more than a remote and improbable way. What is "remote" or "problematical" must in each case

be a question of fact, but the prior decisions of this Court which have sustained Congressional action in various fields show clearly that the present Act, which, as a wholly voluntary measure, has met with wide acceptance as an aid to efficient interstate commerce in cotton, eliminates a hindrance which is present and direct.

In *Colorado* v. *United States,* 271 U. S. 153, and *Florida* v. *United States,* 292 U. S. 1, the Court sustained orders of the Interstate Commerce Commission, in the first case authorizing the abandonment of an unprofitable spur lying wholly within the State, and in the latter setting aside certain unremunerative intrastate rates, on the ground that the losses which would otherwise be incurred in each case might prejudice the carrier's ability efficiently to serve interstate commerce, although the changes in each case amounted to less than 2 percent of the carriers' *net* railway operating income. The disorganization which would result from a weakening of the credit structure upon which interstate trade in cotton is now built stands in sharp contrast with the isolated and sporadic disturbances created by strikes at a particular plant (*Coronado Coal Co.* v. *United Mine Workers of America,* 268 U. S. 295), by the distribution of premiums in penny-candy packages (*Federal Trade Commission* v. *Keppel & Bro.,* 291 U. S. 304), and by the size of the fees paid to livestock brokers at stockyards (*Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420).

II

WAREHOUSE RECEIPTS FOR COTTON ISSUED BY WAREHOUSES SUCH AS THE ONE INVOLVED IN THE PRESENT CASE ARE INSTRUMENTALISTS OF INTERSTATE COMMERCE AND HENCE WITHIN THE POWER OF CONGRESS TO PROTECT

Appellant has argued heretofore that Congress may extend the privilege of a Federal license to cotton warehouses, either because they were within or closely connected with a current of interstate commerce, or because this operation had a direct and substantial effect upon that flow. If neither of these bases will support the wide power to allow warehouses to submit their complete manner of operation to the supervision of Congress, appellant submits that the criminal penalties sought to be imposed upon appellee may be supported as a proper means of preserving the value and acceptability of warehouse receipts, and making them more efficient and satisfactory instrumentalities in producing and sustaining the commerce in cotton among the States.

Warehouse receipts have such an essential function in marketing the cotton crop of the South (pp. 7–10, 16–18, *supra*) that any factors which tend to make the receipts unreliable, and hence not easily transferable in the channels of credit, seriously impedes the movement of that crop. The importance of warehouse receipts for agricultural products which are to move in interstate commerce is by no means

confined to cotton,[40] but in the marketing of that crop they are of preeminent importance in furnishing the medium for the credit which the local financial institutions cannot supply.

Not only do the receipts bear a very direct relation to the efficient and orderly flow of the cotton in interstate commerce, but they frequently become articles of interstate commerce themselves. As stated above (p. 18, *supra*), the receipts are sent out of the State for use in meeting obligations under future contracts, mills in other States purchase cotton by acquisition of the receipts, and loans are frequently negotiated by sending the receipts from the local bank to the large financial center. It is only reasonable to suppose that the receipts from the warehouses of Clarksdale, situated as it is less than a hundred miles from Memphis, Tennessee, and about equidistant between St. Louis and New Orleans find their way frequently to the banks and markets in those places.[41]

The present Act is an attempt to make the warehouse receipt as useful as possible in facilitating

[40] See Hanna, *The Protection of a Holder of a Warehouse Receipt* (1931), 15 Minn. L. Rev. 292, 316.

[41] The amount of credit supplied to cotton marketing by these three cities is very large. During the three-year period, 1919–1922, Memphis ranked fourth among the cities of the United States in this respect, and New Orleans and St. Louis ranked second and sixth, respectively. The average maximum borrowing in these cities for cotton marketing was $23,978,963.50, or almost 20 percent of the total amount supplied. Cotton Financing, *supra*, p. 36.

this interstate flow. The Act recognizes that the receipt is fully acceptable only if the banks and the buyer can rely on its genuineness, the truth of the statements contained in it, and the fact that the cotton will be in the warehouses, in good condition, when the receipt is presented. By the Act and the regulations promulgated thereunder by the Secretary of Agriculture each of these factors is assured. The receipts themselves are, as has been above indicated, printed on special paper, numbered consecutively, and preserved after cancellation, and particular precautions are taken if duplicates are necessary to replace any which may be lost or destroyed. The Act itself provides for the licensing of the people who weigh, sample, grade, and classify, with the object of assuring the prospective taker of the receipt that the statements contained have been made by experienced men. That this service is a necessary feature of the scheme is indicated by the large number of people who have been licensed under it.[42] Finally, adequate bonds and insurance are required, and the warehouse itself must be properly constructed and located. That all the requirements are met is assured by frequent inspection. The fact that the Act has been so widely accepted demonstrates that any weakening of these guaranties of the quality of the receipts would seriously hamper the cotton marketing process.

[42] The latest weekly report of the Bureau of Agricultural Economics shows that 884 people had been licensed as classifiers, weighers, etc., in cotton and a total of 2,136 in all products which may be stored in licensed warehouses.

Appellant submits that the present case is in no way different from *United States* v. *Ferger*, 250 U. S. 199, in which the power of Congress to protect bills of lading used in interstate and foreign commerce was sustained. The functions of the two types of commercial paper is essentially similar. The protection of both is necessary for "securing and fructifying the flow of a vast volume of interstate commerce" and to both are equally applicable the Court's statement that "the faith and credit given to their genuineness and the value they represent are the producing and sustaining causes of the enormous number of transactions * * *" (p. 204). The extensive use of the warehouse receipt and the dependence of the free flow of cotton in interstate commerce upon its wide and ready acceptability show clearly that Congress may at least offer to assist the flow by extending the advantages of a Federal warehouse receipt, of unquestioned value, to those who desire to avail themselves of the privilege.

III

IF THE WAREHOUSE ACT, AS APPLIED TO APPELLEE, IS A VALID EXERCISE OF THE POWER OF CONGRESS OVER INTERSTATE COMMERCE, CRIMINAL SANCTIONS MAY PROPERLY BE USED TO MAKE ITS OPERATION EFFECTIVE

The criminal penalties imposed by the Warehouse Act (7 U. S. C., Sec. 270, *supra*, pp. 2–3) are vitally important to its successful operation, for in

no other way can the regulation imposed by the statute be made effective. *United States* v. *Ferger,* 250 U. S. 199, again offers a direct analogy. Forgery of bills of lading was there punished because it would destroy confidence in the genuine bills. Likewise here any illegal removal of the cotton upon which the receipt is bottomed would weaken the general confidence in warehouse receipts. The similarity between the two types of injury to the value of warehouse receipts is further borne out by the fact that Congress has made the two offenses subject to the same penalty and has dealt with both in the same section of the Act. That the single isolated forgery with which the Court was concerned in the *Ferger* case would, in itself, have little or no effect on public confidence in bills of lading generally was no objection to the exercise of congressional power to punish it, nor should the fact that the illegal removal of only three bales of cotton will have slight effect, of itself, in lessening confidence in warehouse receipts be material here. In either case, the cumulative effect of many similar acts can be prevented only by the discouragement of the individual instances. See *Westfall* v. *United States,* 274 U. S. 256, 259.

Nor is it material that a license under the Act is not mandatory. The warehouseman, having received a license, thereby obtains Congressional protection, not only against acts of his own employes harmful to the proper functioning of the

warehouse and its receipts in interstate commerce, but also against acts by those who may be legally strangers to it. *Westfall* v. *United States,* 274 U. S. 256.

IV

THERE WAS NO DEFECT IN THE INDICTMENT

The District Judge construed Section 270, 7 U. S. C., supra, pp. 2–3, to require that an indictment under the section must allege that the property removed was the property of some person, and the name of that person, that there was an intent to defraud the owner thereof, and that it was necessary to allege that the property was of some value. Appellant submits that such a construction is unwarranted by the statute. This Court has jurisdiction on this appeal to pass on such questions, as well as on the constitutionality of the Act. *United States* v. *Keitel,* 211 U. S. 370; *United States* v. *Stevenson,* 215 U. S. 190.

The elements which the District Court found lacking in the indictment might all be requisites of an indictment for common-law larceny, but this is an indictment for a statutory offense. If the words of the statute are fully descriptive of the offense, the indictment need only follow the language of the statute. *Potter* v. *United States,* 155 U. S. 438, 444; *United States* v. *Carll,* 105 U. S. 611, 612; *United States* v. *Simmons,* 96 U. S. 360, 362.

Each count in the indictment (R. 3) follows closely the language of Section 270. The use of

the word "steal" in the indictment may be regarded as surplusage. The statute punishes anyone who may "remove from a licensed warehouse contrary to this chapter or the regulations promulgated thereunder, any agricultural products stored or to be stored in such warehouse, and for which licensed receipts have been or are to be issued." The indictment adopts this language, adding that it was "knowingly, willfully, and unlawfully" done. The bale of cotton is accurately described by number. The offense forbidden by the statute is fully described therein, and that offense is clearly made out by the indictment.

It seems unnecessary to comment on the alleged vagueness and indefiniteness of the indictment. It clearly advises the appellee of the charge he is to meet, and any details may be supplied by a bill of particulars.

CONCLUSION

It is respectfully submitted that the decision below should be reversed and the case remanded for further proceedings.

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